

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Happy's Pizza Franchise, LLC, a Michigan
limited liability company,

Plaintiff,

v.

Case No. 13-11910

Chicago Partners #78, LLC, an Illinois
limited liability company, Harvey Holdings
#79, LLC, an Illinois limited liability
company, and Nneka Ezurike-Green,
an individual,

Honorable Sean F. Cox

Defendants.

**EX PARTE TEMPORARY RESTRAINING ORDER AND
ORDER REGARDING PRELIMINARY INJUNCTION HEARING**

On April 29, 2013, Plaintiff Happy's Pizza Franchise, LLC ("Plaintiff") filed a Verified Complaint and Motion for Issuance of a Temporary Restraining Order Without Notice And For Preliminary Injunction against Defendants Chicago Partners #78, LLC, an Illinois

limited liability company ("Chicago Partners"), Harvey Holdings #79, LLC, an Illinois limited liability company ("Harvey Holdings"), and Nneka Ezurike-Green ("Green"), an individual (collectively "Defendants").

It is this Court's normal practice to attempt to hold a Status Conference with the parties before issuing a temporary restraining order or holding a hearing on a motion for preliminary injunction. As such, on April 30, 2013, this Court issued a Notice to Appear for a Status

Conference in this matter on May 1, 2013, at 10:00 a.m. (Docket Entry No. 3). That Order provided that Defendants are required to attend the conference and that “Plaintiff is instructed to serve a copy of this Notice and the Motion for Temporary Restraining Order on Defendants prior to the status conference.” (*Id.*).

On May 1, 2013, Plaintiff’s counsel appeared for the status conference but no one on behalf of Defendants appeared. Plaintiff’s counsel indicated that he had made diligent efforts to serve the two corporate defendants (Chicago Partners and Harvey Holdings), and had actually served the individual Defendant (Green) with the Notice to Appear and the Motion for Temporary Restraining Order. Thereafter, Plaintiff’s Counsel filed certificates of service reflecting same. (*See* Docket Entry Nos. 7-10).

Thus, although notice is not required before this Court issues an ex parte temporary restraining order under Fed. R. Civ. P. 65, this Court is satisfied that the Defendants had actual notice of the pending motion and the scheduled Status Conference.

Now, this Court having reviewed Plaintiff’s Verified Complaint and Motion, the Court concludes that the Verified Complaint shows that immediate and irreparable injury, loss, or damage will result to the movant before the adverse parties can be heard in opposition.

Accordingly, IT IS ORDERED that Plaintiff’s Motion for a Temporary Restraining Order is hereby GRANTED and this Court ORDERS that Defendants and their officers, agents, servants, employees, and attorneys, and persons who are in active concert or participation with them, are ENJOINED AND RESTRAINED FROM:

1. Using any of Plaintiff’s franchise marks, attached hereto as Exhibit A, including but not limited to its trademarks, service marks, trade names, trade dress, know-how and processes (“Franchise Mark”);

2. Using Plaintiff's Franchise System, Plaintiff's Operations Manual, or any of the Confidential Information defined in Paragraph 11.1 of the Franchise Agreements;
3. Operating or doing business under any name or in any manner that gives the general public the impression that Defendants' franchises with Plaintiff are still in force, or that Defendants are affiliated with Plaintiff or authorized to use Plaintiff's Franchise Marks;
4. Using signs, menu board inserts, point of sale materials, trade dress, or restaurant design characteristics uniquely identified with a Happy's Pizza® franchise;
5. Using any advertising that directly or indirectly states or implies that Defendants are associated with Plaintiff, or Plaintiff's Franchise Marks or franchise system;
6. Directly or indirectly engaging in any activity in competition with Plaintiff or its franchisees, including acquiring an ownership interest in a competing business (a business that sells pizza, ribs, chicken, seafood, subs or salads for carry-out, dine-in, catering or delivery) at any location within ten miles of either of the franchise locations (8710-8718 Halsted Ave. Chicago, IL 60620 or 15900 Halsted Ave. Chicago IL 60426) or at any location within ten miles of an existing Happy's Pizza® franchise restaurant location; and
7. Knowingly assisting, aiding or abetting any other person or entity engaging in or performing any of the above activities.

IT IS FURTHER ORDERED that, unless this Court orders otherwise, this Temporary Restraining Order, which was issued on May 2, 2013, at approximately 10:40 a.m. **shall expire on May 14, 2013, at 8:00 a.m.**

IT IS FURTHER ORDERED that Plaintiff shall serve a copy of this Temporary Restraining Order, together with the Summons and Complaint, on Defendants forthwith and file certificates of service with the Court.

IT IS FURTHER ORDERED that: 1) this Court shall hold a hearing on Plaintiff's Motion for Preliminary Injunction on **May 13, 2013, at 3:15 p.m.**; and 2) Defendants shall file a

written response to Plaintiff's Motion for Preliminary Injunction no later than **May 9, 2013, at 5:00 p.m.**

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: May 2, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 2, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager

**EXHIBIT A
TO TEMPORARY RESTRAINING ORDER**

- 1) “Happy’s Pizza” service mark, USPTO registration number 3,608,919, registered April 21, 2009;
- 2) Happy’s Pizza logo and service mark, USPTO registration number 3,773,254, registered April 6, 2010;
- 3) “Happy Wings” trademark, USPTO registration number 3,476,533, registered July 29, 2008;
- 4) “Happy Subs” trademark, USPTO registration number 3,912,222, registered January 25, 2011;
- 5) “Happy Fries” trademark, USPTO registration application pending, serial number 85880372;
- 6) “Happy Chips” trademark, USPTO registration application pending, serial number 77856365.